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Appeals Panel Denies U.S. Motion In Navy Espionage Suspect's Trial

By KATHERINE BISHOP

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SAN FRANCISCO, July 2 — A Federal appellate court panel today upheld a trial judge's jury instruction in the espionage trial of Jerry A. Whitworth.

The ruling, by the United States Court of Appeals for the Ninth Circuit, will allow closing arguments and instructions to go forward on July 8, the day jurors have been instructed to return to court after the Fourth of July holiday.

The appeals court had halted the trial on June 27 to consider the Government's appeal after Federal District Judge John P. Vukasin Jr. refused a request by prosecutors to change a proposed jury instruction regarding the eight counts of espionage in the 13-count indictment.

The espionage statute under which Mr. Whitworth is charged makes it illegal to deliver military information to any foreign nation with the intent that it be used to the advantage of that nation or to the detriment of the United States.

But the language of the indictment was drawn more specifically. It charged that Mr. Whitworth stole and passed classified Navy cryptographic information and coded messages with the intent that they be used to the advantage of the Soviet Union.

What Whitworth Knew

The Government's case has relied on the assertion that Mr. Whitworth passed the stolen materials to John A. Walker Jr., who has admitted heading a Soviet spy ring, in exchange for \$332,000 over a 10-year period.

Judge Vukasin ruled he would instruct the jury that the Government must have proved that Mr. Whitworth knew the materials were being sold to agents of the Soviet Union, as the indictment states, in order to win conviction for espionage.

tion for espionage.

One of the main thrusts of the defense case has been to establish that Mr. Whitworth believed the information was being passed to an ally of the United States rather than the Soviet Union.

The appeals court's brief unanimous ruling said it did not find the circumstances of the appeal compelling enough to override a policy against reviewing discretionary orders of trial judges.

The Government's appeal appeared to have been an extraordinarily rare occurrence. Attorneys for both sides in the case and the judges on the appeals court panel could find no other case in which a Federal appellate court intervened in an ongoing trial to order a jury instruction.

An Additional Condition

The Government may also obtain conviction for espionage by proving that Mr. Whitworth intended that the stolen materials be used to injure the United States.

But prosecutors conceded in papers filed with the appeals court that such an assertion would be extremely difficult to prove in a case where the defendant claims intent to aid an ally because "helping allies may not under some circumstances injure this country, or at least a defendant may reasonably be found to believe such."

Judge Vukasin will also instruct the jurors that they may find Mr. Whitworth guilty of a lesser offense of passing classified military information to an unauthorized person. The charge carries a maximum sentence of 10 years in prison for each count as opposed to the life sentence he would face for each espionage count.